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Legislative Bulletin……..……March 1, 2007

Contents:

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: $0

Effect on Revenue: Possible increase of a few million dollars over five years

Total Change in Mandatory Spending: $0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: Several

Number of *Bills* Without Committee Reports: 0

Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 800—Employee Free Choice Act (*George Miller, D-CA*)

Order of Business: The bill is scheduled to be considered on Thursday, February 29th, subject to a (likely) structured rule. Summaries of amendments made in order under the rule will be provided in a separate RSC document.

Summary: H.R. 800 would allow the National Labor Relations Board (NLRB) to certify a union without conducting a requested secret-ballot election. More specifically, the bill would amend the National Labor Relations Act (NLRA) to require the NLRB to certify a union without requiring a secret-ballot election when a majority of the bargaining unit employees (50% plus one) have signed authorizations ("card checks") designating the union and there is no other union currently recognized as the exclusive representative of any of the employees in the unit. In other

words, unions would be able to influence private-sector employees to "vote" in favor of their being represented by the unions without having to move to an election where employees can cast their votes in private.

Also, the bill would set new requirements for the initiation and completion of a first union contract, once a union has been certified for a given set of employees.

Specifically, the bill would require an employer to commence collective bargaining within 10 days after receiving a request for an initial collective bargaining agreement (after certification). If, after 90 days after bargaining commenced (or such additional period as the parties may agree upon), the parties have failed to reach an agreement, either party may request mediation from the Federal Mediation and Conciliation Service. The Mediation Service would have to "promptly" (not defined) put itself in communication with the parties and use its "best efforts" (not defined) to bring them to agreement.

If, after 30 days after the mediation request is made (or such additional period as the parties may agree upon), the Mediation Service is not able to bring the parties to agreement, the Mediation Service would have to refer the dispute to an arbitration board established in accordance with Mediation Service regulations. The arbitration board would have to issue a **final, binding decision** settling the dispute. The decision would be binding upon the parties for two years, unless amended beforehand by written consent of the parties.

The Education and Labor Committee (Republican staff) note that *forcing* parties to come to a collective bargaining agreement is unprecedented and was never the intent of the NLRA (as the Supreme Court of the United States has ruled before in such cases as *H.K. Porter Co. v. NLRB*, 397 U.S. 99 (1970)). The Committee writes: "Because the binding arbitration provisions would impose a contract on both employers and workers for up to two years, the proposed legislation would fundamentally change the central purpose of the NLRA. The legislation would transform the government's role from one of encouraging collective bargaining to that of mandating that the parties reach agreement and of effectively setting the terms of collective bargaining agreements."

The Bush Administration, in its Statement of Administration Policy, calls the binding arbitration provisions "an unprecedented government intrusion into the right to bargain freely over working terms and conditions."

Additionally, H.R. 800 would require the NLRB to seek an injunction against employers in cases where the employer has *allegedly* discharged or discriminated against workers while a union drive is ongoing or before the first collective bargaining agreement is finalized. This provision would expand this NLRB authority from instances where unions are already certified to those that are not yet certified. If the NLRB finds that an employer has discriminated against an employee during a union campaign or before the first collective bargaining agreement, the NLRB would have to order remedial back pay plus damages of two times the amount of back pay.

Furthermore, any employer who willfully or repeatedly commits any unfair labor practice while a union drive is ongoing or before the first collective bargaining agreement is finalized would be subject to a civil penalty up $20,000 per violation plus any make-whole remedy ordered by the NLRB. Note: unfair union tactics are not covered by this provision. Plus, current law (29 U.S.C. 162) contains a provision that provides for criminal fines of up to $5,000, or imprisonment up to a year, against any person (employer, union, or co-worker) who interferes with NLRA enforcement.

Background: The NLRA gives private-sector workers the right to join or form a labor union and to bargain collectively over wages, hours, and other working conditions. The "card check" issue involves whether to change the procedures under which workers choose to join, or not to join, a union.

Under current law, the NLRB conducts a secret ballot election for union representation when a union, employer, or employees file a petition requesting one, if at least 30% of employees have signed a petition or union authorization cards. The NLRA does not *require* secret ballot elections, though a union cannot get official NLRB certification without a private-ballot election run by the NLRB.

In general, as the Congressional Research Service reports, unionization campaign rules differ for employees, union organizers, and employers (though some exceptions do apply). During work hours, employees can campaign for union support from their coworkers in both work and non-work areas. If an employer does not allow the distribution of literature in work areas, employees can only distribute union literature in non-work areas. If an employer allows the distribution of other kinds of literature in work areas, employees may also distribute union literature in those areas.

In general, union organizers cannot conduct a campaign on company property (unless the worksite is hard to access or the company allows other nonemployees to solicit on company property). Organizers may meet with employees and distribute literature on union property and in non-work areas on employer property. Union organizers may also contact employees at home by phone, mail or in person.

Employers may campaign on company property and may require employees to attend meetings during work hours to give the employer position on unionization (but not in the 24-hour period before an election). Employers and supervisors can give employees written information and hold individual meetings with employees.

The late Rep. Charlie Norwood's office cites a recent Zogby poll in which 63% of union workers expressed their belief that stronger laws are needed to protect the secret ballot election process. Employers have also cited coercive tactics from unions (threats of boycotts, etc.) to stop requests for secret ballots.

For additional background on the card check issue, see this webpage: http://www.congress.gov/erp/rl/pdf/RL32930.pdf.

Recent Legislative Action: H.R. 800 is identical to H.R. 1696 and S. 842 (Senator Ted Kennedy's bill) from the 109th Congress, neither of which saw legislative action. Rep. Charlie Norwood introduced the Secret Ballot Protection Act (H.R. 874) in the 109th Congress, which would require a secret ballot election for union authorization. The Norwood bill also saw no legislative action.

RSC Bonus Fact: The Communist Party of the United States supports the Employee Free Choice Act: http://www.cpusa.org/article/articleview/697/.

Committee Action: On February 5, 2007, H.R. 800 was referred to the Education and Labor Committee, which, on February 14, 2007, marked up and ordered the bill reported to the full House by a 26-19 party-line vote. To see this roll-call, and the roll-calls on the amendments that failed in committee, visit this webpage: http://nationaljournal.com/members/markups/2007/02/mr_20070214_4.htm.

Possible Conservative Concerns: Some conservatives might be concerned that card-check-only "elections" might put undue pressure on employees to agree to union representation, even when they really do not want it. Even though it is illegal for an employer or a union to threaten or coerce any employee to sign a union authorization card, peer pressure in non-secret elections can be powerful.

In addition, some conservatives may be concerned that union leaders are using the card check legislation to silence the individual voices of workers. For example, UNITE HERE's Bruce Raynor, said, "There's no reason to subject the workers to an election." http://townhall.com/columnists/MattKibbe/2007/01/12/big_labor%E2%80%99s_card_check_is_bad_news_for_workers.

Furthermore, some conservatives may be concerned that this bill would force private-sector employers to adhere to a collective bargaining "agreement" to which they do not agree.

In short, some conservatives may be concerned that this bill would REMOVE worker choice in two instances: whether they and their colleagues are represented by a union (and which one) and whether to accept a first collective bargaining agreement.

Administration Position: The Statement of Administration Policy (SAP) for H.R. 800 says the following:

> The Administration strongly opposes H.R. 800, the "Employee Free Choice Act." H.R. 800 would strip workers of the fundamental democratic right to a supervised private ballot election, interfere with the ability of workers and employers to bargain freely and come to agreement over working terms and conditions, and impose penalties for unfair labor practices only on employers
> -- and not on union organizers -- who intimidate workers. If H.R. 800 were presented to the President, he would veto the bill.

http://www.whitehouse.gov/omb/legislative/sap/110-1/hr800sap-r.pdf

Additionally, U.S. Secretary of Labor Elaine Chao issued the following statement this month: "A worker's right to a secret ballot election is an intrinsic right in our democracy that should not be legislated away at the behest of special interest groups." Chao said that she will recommend that the President veto this legislation, should it reach his desk in its current format.

Cost to Taxpayers: CBO estimates that enacting H.R. 800 could increase revenues—likely less than $500,000 per year—from the new penalties in the legislation.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill would automatically enact collective bargaining "agreements."

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. CBO reports that H.R. 800 would impose mandates on private-sector employers by adding requirements under the NLRA, including requiring that employers commence an initial agreement for collective bargaining no later than 10 days after receiving a request from an individual or a labor organization that has been newly organized or certified.

The bill contains no intergovernmental mandates.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: An earmarks/revenue benefits statement required under House Rule XXI, Clause 9(a) was not available at press time.

Constitutional Authority: The Education and Labor Committee, in House Report 110-23, cites constitutional authority in Article 1, Section 8, Clauses 1 (the congressional power to promote the general welfare of the United States) and 3 (the congressional power to regulate interstate commerce).

Outside Organizations: Card-check-only legislation is being opposed by a wide variety of conservative and business organizations, including, but not limited to:

- American Hospital Association
- American Hotel and Lodging Association
- Americans for Prosperity
- Americans for Tax Reform
- Associated Builders & Contractors
- Associated General Contractors
- Citizens Against Government Waste
- Club for Growth
- Fraternal Order of Police
- FreedomWorks
- Independent Electrical Contractors
- International Council of Shopping Centers
- International Foodservice Distributors Association
- International Franchise Association
- National Association of Manufacturers

- National Federation of Independent Business
- National Restaurant Association
- National Retail Federation
- National Taxpayers Union
- Printing Industries of America
- U.S. Chamber of Commerce

Additionally, the Heritage Foundation released a paper strongly opposing the notion of card check elections, described as undemocratic: http://www.heritage.org/Research/Labor/wm1255.cfm.

Outside Group Support: Card check legislation is being supported by a wide variety of liberal and labor organizations, including, but not limited to:

- ACORN
- AFL-CIO
- AFSCME
- Americans for Democratic Action
- Center for American Progress
- Center for America's Future
- Communist Party of the United States
- Council on American-Islamic Relations
- Democratic Leadership Council
- Democratic National Committee
- Earth Action Network
- Human Rights Watch
- NAACP
- Sierra Club
- United Students Against Sweatshops
- Unitarian Universalist Association of Congregations – Washington, D.C., office
- UNITE HERE!

http://www.aflcio.org/joinaunion/voiceatwork/efca/allies.cfm

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